

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

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5 ADRIAN SCHOOLCRAFT,

6 Plaintiff,

7 -against- Index No.

10CIV-6005 (RWS)

8
9 THE CITY OF NEW YORK, DEPUTY CHIEF
10 MICHAEL MARINO, Tax Id. 873220,
Individually and in his Official
11 Capacity, ASSISTANT CHIEF PATROL
BOROUGH BROOKLYN NORTH GERALD NELSON,
12 Tax Id. 912370, Individually and in his
Official Capacity, DEPUTY INSPECTOR
STEVEN MAURIELLO, Tax Id. 895117,
13 Individually and in his Official
Capacity, CAPTAIN THEODORE LAUTERBORN,
Tax Id. 897840, Individually and in his
14 Official Capacity, LIEUTENANT JOSEPH
GOFF, Tax Id. 894025, Individually and
15 in his Official Capacity, stg. Frederick
Sawyer, Shield No. 2576, Individually
16 and in his Official Capacity, SERGEANT
KURT DUNCAN, Shield No. 2483,
17 Individually and in his Official
Capacity, LIEUTENANT TIMOTHY CAUGHEY,
18 Tax Id. 885374, Individually and in his
Official Capacity, SERGEANT SHANTEL
19 JAMES, Shield No. 3004, and P.O.'s "JOHN
DOE" 1-50, Individually and in their
20 Official Capacity (the name John Doe
being fictitious, as the true names are
21 presently unknown)(collectively referred
to as "NYPD defendants"), JAMAICA
22 HOSPITAL MEDICAL CENTER, DR. ISAK ISAKOV,
Individually and in his Official
23 Capacity, DR. LILIAN ALDANA-BERNIER,
Individually and in her Official Capacity
24 and JAMAICA HOSPITAL MEDICAL CENTER
EMPLOYEES "JOHN DOE" # 1-50, Individually

25 (Continued)

1 L. ALDANA-BERNIER

2 morning.

3 MR. LEE: At what time?

4 THE REPORTER: 6:30 in the
5 morning.

6 MR. SUCKLE: Just give me a
7 second.

8 MR. SMITH: Did you see 11/1?

9 THE WITNESS: Yes, 11/1/2009 at
10 6:30 in the morning.

11 Q. And this is a note by who?

12 A. Dr. Lewin.

13 Q. Spell that?

14 A. L-E-W-I-N.

15 Q. It says 1 of 3 on top, correct?

16 A. Yes.

17 Q. It's a three-page note,
18 correct?

19 A. Yes.

20 Q. And it ends and the three pages
21 end with a note on 11/1/09 at 6:30 a.m.,
22 correct?

23 A. Yes.

24 Q. This is called a "Consultation
25 Form." What is that?

1 L. ALDANA-BERNIER

2 A. When the doctor calls for a
3 consult, this is the form that we use to
4 write our notes.

5 Q. What was the purpose of having
6 Mr. Schoolcraft evaluated, if you recall,
7 from your review of the chart?

8 A. Okay. It said in here that a
9 psych consult was called and reported as
10 patient was acting bizarre.

11 Q. Did you read this note prior to
12 your evaluation of the patient?

13 A. Yes.

14 Q. Is this one of notes that you
15 read prior to coming here to testify in
16 preparation for your testimony today?

17 A. Yes.

18 Q. And were you able to read the
19 note, the handwriting, when you read
20 it --

21 A. Yes.

22 Q. -- back in 2009?

23 A. Yes.

24 Q. Have you seen Dr. Lewin's
25 handwriting before?

1 L. ALDANA-BERNIER

2 A. Yes.

3 Q. And you had become familiar
4 with it?

5 A. Yes.

6 Q. And if you go to the second
7 page of that note, did you see from that
8 note there had been no prior psychiatric
9 history?

10 A. It says in here, "Denied past
11 psych hospitalization or treatment."

12 Q. Or suicidal attempt?

13 A. Yes.

14 Q. And after this note was
15 written, was Mr. Schoolcraft free to go
16 home?

17 A. After this note was written,
18 she had recommendations.

19 Q. I know. But my question was:
20 Was Mr. Schoolcraft free to go home after
21 that note was written?

22 A. No.

23 Q. When you say "no," why not?

24 A. Because then that was her
25 recommendation he needed one-to-one

1 L. ALDANA-BERNIER

2 observation for unpredictable behavior
3 and escape risk.

4 Q. What was he escaping from, what
5 was the escape risk from?

6 A. He might run out of the
7 emergency room because it's unlocked
8 door.

9 Q. He needed to be held because he
10 was an escape risk?

11 A. He needed to be observed more.

12 Q. He needed to be observed more?

13 A. One-to-one, yes.

14 Q. Did you also read in the note
15 on the second page, the last line on the
16 second page where the note reads, "He
17 denies suicidal ideations." Do you see
18 that?

19 A. Yes.

20 Q. And "He denies homicidal
21 ideations."

22 A. Yes.

23 Q. Do you have any reason when you
24 read that note to believe that wasn't
25 true?

1 L. ALDANA-BERNIER

2 MR. LEE: Objection to form.

3 A. But you are missing the point
4 in there when he is paranoid about his
5 supervisors.

6 Q. I asked you whether you had any
7 reason to believe he was not suicidal and
8 not homicidal?

9 A. I think I need to know further
10 if he was suicidal or homicidal. At that
11 point in time, I need to assess suicidal
12 or homicidal.

13 Q. You didn't have enough
14 information by just reading suicidal or
15 homicidal, correct, you needed more
16 information, correct?

17 A. Yes, it's saying here he was
18 paranoid about his supervisors.

19 MR. CALLAN: Objection to form.

20 Q. So he was being held because he
21 was paranoid?

22 A. Not only that. He became
23 agitated, uncooperative, verbally abusive
24 while he was in the medical ER so we have
25 to find out why there is agitation, why

1 L. ALDANA-BERNIER

2 is was behaving bizarre.

3 Q. Just so I understand. He is
4 been held because he is agitated?

5 A. Yes.

6 MR. CALLAN: Wait for the
7 question.

8 Q. He was being held because you
9 want to know more about him, correct?

10 MR. CALLAN: Objection to form
11 of the question.

12 Q. Is that correct?

13 MR. CALLAN: That question
14 doesn't make any sense. You are
15 talking about --

16 MR. SUCKLE: You have your
17 objection.

18 Q. Is that your understanding of
19 the note?

20 A. There was more to that. The
21 patient was behaving bizarre.

22 Q. What action was he taking that
23 was bizarre?

24 A. According to the note, when
25 they went to his house, the patient

1 L. ALDANA-BERNIER

2 barricaded himself and he will not open
3 the door so they had to break into his
4 apartment.

5 Q. Is it your understanding under
6 9.39 of the Mental Hygiene Law, someone
7 can be held because they are acting
8 bizarre?

9 MR. CALLAN: Objection to form.

10 MR. LEE: Objection to form.

11 Q. Is that your understanding?

12 A. That's my -- he can be bizarre
13 and he can be psychotic.

14 Q. The question was: Is it your
15 understanding of 9.39 of the Mental
16 Hygiene Law that a patient could be held
17 because they're acting bizarre?

18 MR. LEE: Objection to form.

19 A. He can be a danger to himself.

20 Q. You have to answer my question.

21 Can a patient be held under
22 Section 9.39 of the Mental Hygiene Law
23 because they are acting bizarre?

24 A. Yes.

25 Q. Can they be held under Mental

1 L. ALDANA-BERNIER

2 Hygiene Law 9.39, as you understand it,
3 because they are agitated?

4 A. Yes.

5 Q. That's your understanding of
6 the law?

7 MR. CALLAN: Objection to the
8 form of the question.

9 Q. Correct?

10 A. [No response.]

11 Q. Am I correct that's your
12 understanding?

13 A. My understanding, yes.

14 Q. So a good and accepted medical
15 practice as you understand it allowed to
16 make a hospital to hold Mr. Schoolcraft
17 on November 1, 2009, 'cause he was acting
18 bizarre, correct?

19 MR. CALLAN: Objection to form.

20 MR. LEE: Objection to the form.

21 Q. Correct?

22 A. It's not only the behaving
23 bizarre. It's the whole picture that was
24 going on at the time. From the --

25 Q. Did you see anything in this

1 L. ALDANA-BERNIER

2 note that Mr. Schoolcraft was exhibiting
3 a threat to another person?

4 A. Not a threat to another person.

5 Q. Did you see anywhere in here
6 that he was suicidal?

7 A. He is not suicidal.

8 Q. Did you see anywhere in here
9 that he was going to harm himself in any
10 way?

11 A. That I have to question if he
12 was going to hurt himself or if he was a
13 danger to himself because if I have
14 somebody in the emergency room, you have
15 a report that he was behaving bizarre or
16 he was agitated, and if I look at the
17 whole picture from the time that he was
18 taken away from his home where he was --
19 he barricaded himself, then I have to
20 consider him to be held against his will.

21 Q. Did you see anything in this
22 record that Mr. Schoolcraft indicated to
23 the consulting physician that he was
24 going to harm himself?

25 A. He said in here that he denied

1 L. ALDANA-BERNIER

2 that he was going to hurt himself. There
3 is nothing that he was going to hurt
4 himself.

5 Q. Or hurt anybody else, correct?

6 A. Nope.

7 Q. Do you know the physician, the
8 psychiatric resident, that signed that
9 note?

10 A. That is Dr. Lewin. The
11 resident was Dr. Lewin, and the attending
12 Dr. Patel.

13 Q. On the last page of that note,
14 it's a three-page note, is there a stamp
15 there for the resident?

16 A. Yes.

17 Q. So Dr. Lewin was a resident?

18 A. Yes.

19 Q. And did Dr. Lewin provide any
20 notice to Mr. Schoolcraft under 9.39 of
21 the Mental Hygiene Law?

22 MR. RADOMISLI: Objection.

23 A. I would not remember that.

24 Q. Did Dr. Lewin, from your review
25 of the records, produce any forms, signed

1 L. ALDANA-BERNIER

2 any form, under 9.39 of the Mental
3 Hygiene Law in order to admit Mr.
4 Schoolcraft against his will?

5 MR. RADOMISLI: Objection.

6 Q. Did you see any form?

7 MR. RADOMISLI: Objection.

8 MR. CALLAN: Objection.

9 Q. Did he fill out any such form?

10 MR. CALLAN: She is supposed to
11 get into his mind and know what he
12 did?

13 MR. SUCKLE: Forms, forms, did
14 you see any forms.

15 MR. CALLAN: Did you see any
16 forms, that's fine.

17 Go right ahead.

18 A. No.

19 Q. Is there anything in the file
20 that suggests that Dr. Lewin actually
21 filled out any form with regard to 9.39
22 of the Mental Hygiene Law?

23 MR. RADOMISLI: Objection.

24 Q. Anything to suggest that?

25 MR. RADOMISLI: Objection.

1 L. ALDANA-BERNIER

2 Q. From your prospective?

3 MR. RADOMISLI: Objection.

4 MR. SUCKLE: I heard it.

5 MR. RADOMISLI: I strenuously
6 object.

7 MR. SUCKLE: I heard your
8 strenuous objection.

9 MR. CALLAN: Do you want her to
10 look through the entire record?

11 A. There are no forms.

12 Q. Did Dr. Lewin, do you see
13 anything to suggest that Dr. Lewin then
14 ensured within 48 hours that another
15 physician evaluated Mr. Schoolcraft?

16 MR. RADOMISLI: Objection.

17 MR. CALLAN: Objection.

18 Q. Does it say anything in there?

19 A. She indicated in here he needs
20 to be transferred to the psych ER.

21 Q. And after Dr. Lewin, there is
22 another signature. Do you know who that
23 is? Did I ask you that already?

24 In the note of November 1, that
25 Dr. Lewin wrote, underneath his signature

1 L. ALDANA-BERNIER

2 is another signature. Do you know whose
3 signature that is?

4 A. That is Dr. Patel.

5 Q. Did Dr. Patel fill out any form
6 that you are aware of in order to comply
7 with 9.39 of the Mental Hygiene Law?

8 MR. LEE: Objection to form.

9 MR. RADOMISLI: Objection.

10 MR. CALLAN: Same objection.

11 Q. No?

12 A. There is no form in here.

13 Q. There is no form in the record,
14 correct?

15 A. None.

16 Q. Did you read Dr. Patel's note
17 at the end there where he signed?

18 A. "I concur with above doctor's
19 treatment recommendations."

20 Q. What is psychotic disorder,
21 what is that?

22 A. Psychotic disorder is one of
23 the categories of diagnosis wherein
24 patient is not in touch with reality.

25 He can have the following

1 L. ALDANA-BERNIER

2 symptoms, like, agitation, aggressive
3 behavior, delusions, hallucinations,
4 impairment in reality testing.

5 Q. That's a pretty broad category,
6 correct?

7 A. Yes.

8 Q. What does Axis I stand for?

9 A. Those are our DSM categories
10 when we are diagnosing patients.

11 Axis I is for psychotic
12 disorders or mental health disorders.
13 Axis II would be our personality
14 disorder. Axis III is the medical
15 disorder. Axis IV is the social
16 stressor. And Axis V is the global
17 functioning.

18 Q. So when you read that note, you
19 learned that there was some social
20 stressors; being, a conflict at the
21 worksite for Mr. Schoolcraft, correct?

22 A. That's correct.

23 Q. Do you know what the nature of
24 a that conflict was?

25 A. Something -- a conflict between

1 L. ALDANA-BERNIER

2 A. It was the next day, yes.

3 Q. Why did you wait till the next
4 day to fill out that form?

5 A. That's when he was going
6 upstairs to the inpatient unit.

7 Q. Where was he from November 2nd,
8 at 3:10 until he went upstairs?

9 A. He was in the psych ER.

10 Q. Why did he stay in the psych ER
11 after you saw him on November 2nd, 2009?

12 A. Why did he stay in the psych
13 ER? I do not know what happened in 2009.
14 Maybe there were no beds available, I
15 have to let him wait in the emergency
16 room.

17 Q. Did you do your mental status
18 examination of Mr. Schoolcraft on
19 November 2nd, 2009, November 3rd, 2009
20 2009, or some other date?

21 A. It was on November 2nd.

22 Q. When you did your mental status
23 examination of Mr. Schoolcraft, did you
24 make -- let's go back.

25 Did you take a history of Mr.

1 L. ALDANA-BERNIER

2 Schoolcraft?

3 A. I spoke to Mr. Schoolcraft, and
4 I did take a history on him.

5 Q. Did you write that history
6 down?

7 A. No, because I did agree with
8 the notes of the resident.

9 Q. Did you make a note of what Mr.
10 Schoolcraft told you regarding his
11 history?

12 A. It's -- all of the notes was in
13 the resident notes.

14 Q. And did you do a mental status
15 examination of Mr. Schoolcraft in your
16 presence?

17 A. I did a mental status exam, and
18 I agreed to the notes of the resident.

19 Q. Am I correct other than the
20 November 2nd, 2009 note, and the November
21 3rd 2009 mental hygiene form that you
22 filled out, you make no other notes in
23 this chart?

24 MR. RADOMISLI: Objection to
25 form.

1 L. ALDANA-BERNIER

2 Q. Am I correct?

3 MR. RADOMISLI: Objection to
4 form.

5 A. That's correct.

6 Q. So the residents had evaluated
7 him and made notes, correct?

8 A. Yes.

9 Q. And you were the director of
10 the emergency room, correct?

11 A. Correct.

12 Q. And you had this patient in
13 front of you, correct?

14 A. Yes.

15 Q. And you had the wherewithal,
16 you had the chart in front of you,
17 correct, when you saw the patient?

18 A. That's correct.

19 Q. And you had the ability and did
20 in fact make notes in the chart, correct?

21 A. That's correct.

22 Q. Just so we are clear: You did
23 not make any independent notes regarding
24 your own findings during your
25 examination, correct?

1 L. ALDANA-BERNIER

2 A. That's correct. I agreed with
3 the notes of the resident.

4 Q. Doctor, do you believe not
5 making any notes regarding your
6 examination and findings with regard to
7 Mr. Schoolcraft was in the bounds of good
8 and accepted medical practice?

9 A. I have the residents that saw
10 that patient and I agreed with their
11 notes so that is my -- the agreement with
12 regards to the notes of the residents
13 since I agreed with the above, I
14 considered that as my notes.

15 Q. I understand when you say you
16 considered it.

17 The question is: Does good and
18 accepted medical practice require you to
19 make your own notes regarding your
20 examination and assessment of the
21 patient?

22 MR. CALLAN: Objection to the
23 form of the question.

24 You can answer.

25 A. If I'm agreeing with notes of